

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 594

Introduced by Assembly Member Harkey

February 25, 2009

~~An act to add Section 17580 to the Government Code, relating to state-mandated local programs. An act to amend Section 65583.1 of the Government Code, relating to land use.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 594, as amended, Harkey. ~~State-mandated local programs. Land use: housing element.~~

The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that analyzes existing and projected housing needs and includes a statement of goals, quantified objectives, policies, financial resources, and scheduled programs for the maintenance, preservation, improvement, and development of housing. The housing element is required to identify the existing and projected housing needs of all economic segments of the community. The Department of Housing and Community Development is authorized to allow a city, county, or city and county to substitute the provision of units for up to 25% of the community's obligation to identify adequate sites for any income category in its housing element, as specified, when the community includes in its housing element a program committing the local government to provide units in that income category within the city, county, or city and county that will be made available through the provision of committed assistance during the planning period covered by the housing element

to low- and very low income households at affordable housing costs or affordable rents, as defined.

This bill would authorize the department to allow a city, county, or city and county to substitute the provision of units for up to 50% of its site identification obligation if it includes in its housing element a program to provide units within the city or county in any income category that will be made available to low- and very low income households through the provision of committed assistance, as defined.

~~Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a procedure for local governmental agencies to file claims for reimbursement for these costs with the Commission on State Mandates.~~

~~This bill would provide that on and after January 1, 2010, legislation that mandates a new program or higher level of service on any local government shall include a provision to repeal the enactment within 6 years and require the Legislative Analyst to report on the enactment, except for legislation that specifically makes this requirement inapplicable, contains a provision to repeal the enactment in less than 6 years, or creates a new crime, changes the definition of a crime, or changes the penalty for a crime.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583.1 of the Government Code is
2 amended to read:
3 65583.1. (a) The Department of Housing and Community
4 Development, in evaluating a proposed or adopted housing element
5 for substantial compliance with this article, may allow a city or
6 county to identify adequate sites, as required pursuant to Section
7 65583, by a variety of methods, including, but not limited to,
8 redesignation of property to a more intense land use category and
9 increasing the density allowed within one or more categories. The
10 department may also allow a city or county to identify sites for
11 second units based on the number of second units developed in
12 the prior housing element planning period whether or not the units

1 are permitted by right, the need for these units in the community,
2 the resources or incentives available for their development, and
3 any other relevant factors, as determined by the department.
4 Nothing in this section reduces the responsibility of a city or county
5 to identify, by income category, the total number of sites for
6 residential development as required by this article.

7 (b) Sites that contain permanent housing units located on a
8 military base undergoing closure or conversion as a result of action
9 pursuant to the Defense Authorization Amendments and Base
10 Closure and Realignment Act (Public Law 100-526), the Defense
11 Base Closure and Realignment Act of 1990 (Public Law 101-510),
12 or any subsequent act requiring the closure or conversion of a
13 military base may be identified as an adequate site if the housing
14 element demonstrates that the housing units will be available for
15 occupancy by households within the planning period of the
16 element. No sites containing housing units scheduled or planned
17 for demolition or conversion to nonresidential uses shall qualify
18 as an adequate site.

19 Any city, city and county, or county using this subdivision shall
20 address the progress in meeting this section in the reports provided
21 pursuant to paragraph (1) of subdivision (b) of Section 65400.

22 (c) (1) The Department of Housing and Community
23 Development may allow a city or county to substitute the provision
24 of units for up to ~~25 percent~~ *50 percent* of the community's
25 obligation to identify adequate sites for any income category in
26 its housing element pursuant to paragraph (1) of subdivision (c)
27 of Section 65583 where the community includes in its housing
28 element a program committing the local government to provide
29 units in that income category within the city or county that will be
30 made available through the provision of committed assistance
31 during the planning period covered by the element to low- and
32 very low income households at affordable housing costs or
33 affordable rents, as defined in Sections 50052.5 and 50053 of the
34 Health and Safety Code, and which meet the requirements of
35 paragraph (2). Except as otherwise provided in this subdivision,
36 the community may substitute one dwelling unit for one dwelling
37 unit site in the applicable income category. The program shall do
38 all of the following:

1 (A) Identify the specific, existing sources of committed
2 assistance and dedicate a specific portion of the funds from those
3 sources to the provision of housing pursuant to this subdivision.

4 (B) Indicate the number of units that will be provided to both
5 low- and very low income households and demonstrate that the
6 amount of dedicated funds is sufficient to develop the units at
7 affordable housing costs or affordable rents.

8 (C) Demonstrate that the units meet the requirements of
9 paragraph (2).

10 (2) Only units that comply with subparagraph (A), (B), or (C)
11 qualify for inclusion in the housing element program described in
12 paragraph (1), as follows:

13 (A) Units that are to be substantially rehabilitated with
14 committed assistance from the city or county and constitute a net
15 increase in the community's stock of housing affordable to low-
16 and very low income households. For purposes of this
17 subparagraph, a unit is not eligible to be "substantially
18 rehabilitated" unless all of the following requirements are met:

19 (i) At the time the unit is identified for substantial rehabilitation,
20 (I) the local government has determined that the unit is at imminent
21 risk of loss to the housing stock, (II) the local government has
22 committed to provide relocation assistance pursuant to Chapter 16
23 (commencing with Section 7260) of Division 7 of Title 1 to any
24 occupants temporarily or permanently displaced by the
25 rehabilitation or code enforcement activity, or the relocation is
26 otherwise provided prior to displacement either as a condition of
27 receivership, or provided by the property owner or the local
28 government pursuant to Article 2.5 (commencing with Section
29 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
30 Safety Code, or as otherwise provided by local ordinance; provided
31 the assistance includes not less than the equivalent of four months'
32 rent and moving expenses and comparable replacement housing
33 consistent with the moving expenses and comparable replacement
34 housing required pursuant to Section 7260, (III) the local
35 government requires that any displaced occupants will have the
36 right to reoccupy the rehabilitated units, and (IV) the unit has been
37 found by the local government or a court to be unfit for human
38 habitation due to the existence of at least four violations of the
39 conditions listed in subdivisions (a) to (g), inclusive, of Section
40 17995.3 of the Health and Safety Code.

1 (ii) The rehabilitated unit will have long-term affordability
2 covenants and restrictions that require the unit to be available to,
3 and occupied by, persons or families of low- or very low income
4 at affordable housing costs for at least 20 years or the time period
5 required by any applicable federal or state law or regulation.

6 (iii) Prior to initial occupancy after rehabilitation, the local code
7 enforcement agency shall issue a certificate of occupancy indicating
8 compliance with all applicable state and local building code and
9 health and safety code requirements.

10 (B) Units that are located in a multifamily rental housing
11 complex of four or more units, are converted with committed
12 assistance from the city or county from nonaffordable to affordable
13 by acquisition of the unit or the purchase of affordability covenants
14 and restrictions for the unit, are not acquired by eminent domain,
15 and constitute a net increase in the community's stock of housing
16 affordable to low- and very low income households. For purposes
17 of this subparagraph, a unit is not converted by acquisition or the
18 purchase of affordability covenants unless all of the following
19 occur:

20 (i) The unit is made available at a cost affordable to low- or
21 very low income households.

22 (ii) At the time the unit is identified for acquisition, the unit is
23 not available at an affordable housing cost to either of the
24 following:

25 (I) Low-income households, if the unit will be made affordable
26 to low-income households.

27 (II) Very low income households, if the unit will be made
28 affordable to very low income households.

29 (iii) At the time the unit is identified for acquisition the unit is
30 not occupied by low- or very low income households or if the
31 acquired unit is occupied, the local government has committed to
32 provide relocation assistance prior to displacement, if any, pursuant
33 to Chapter 16 (commencing with Section 7260) of Division 7 of
34 Title 1 to any occupants displaced by the conversion, or the
35 relocation is otherwise provided prior to displacement; provided
36 the assistance includes not less than the equivalent of four months'
37 rent and moving expenses and comparable replacement housing
38 consistent with the moving expenses and comparable replacement
39 housing required pursuant to Section 7260.

1 (iv) The unit is in decent, safe, and sanitary condition at the
2 time of occupancy.

3 (v) The unit has long-term affordability covenants and
4 restrictions that require the unit to be affordable to persons of low-
5 or very low income for not less than 55 years.

6 (C) Units that will be preserved at affordable housing costs to
7 persons or families of low- or very low incomes with committed
8 assistance from the city or county by acquisition of the unit or the
9 purchase of affordability covenants for the unit. For purposes of
10 this subparagraph, a unit shall not be deemed preserved unless all
11 of the following occur:

12 (i) The unit has long-term affordability covenants and
13 restrictions that require the unit to be affordable to and reserved
14 for occupancy by persons of the same or lower income group as
15 the current occupants for a period of at least 40 years.

16 (ii) The unit is within an “assisted housing development,” as
17 defined in paragraph (3) of subdivision (a) of Section 65863.10.

18 (iii) The city or county finds, after a public hearing, that the unit
19 is eligible, and is reasonably expected, to change from housing
20 affordable to low- and very low income households to any other
21 use during the next five years due to termination of subsidy
22 contracts, mortgage prepayment, or expiration of restrictions on
23 use.

24 (iv) The unit is in decent, safe, and sanitary condition at the
25 time of occupancy.

26 (v) At the time the unit is identified for preservation it is
27 available at affordable cost to persons or families of low- or very
28 low income.

29 (3) This subdivision does not apply to any city or county that,
30 during the current or immediately prior planning period, as defined
31 by Section 65588, has not met any of its share of the regional need
32 for affordable housing, as defined in Section 65584, for low- and
33 very low income households. A city or county shall document for
34 any housing unit that a building permit has been issued and all
35 development and permit fees have been paid or the unit is eligible
36 to be lawfully occupied.

37 (4) For purposes of this subdivision, “committed assistance”
38 means that the city or county enters into a legally enforceable
39 agreement during the first two years of the housing element
40 planning period that obligates sufficient available funds to provide

1 the assistance necessary to make the identified units affordable
2 and that requires that the units be made available for occupancy
3 within two years of the execution of the agreement. “Committed
4 assistance” does not include tenant-based rental assistance.

5 (5) For purposes of this subdivision, “net increase” includes
6 only housing units provided committed assistance pursuant to
7 subparagraph (A) or (B) of paragraph (2) in the current planning
8 period, as defined in Section 65588, that were not provided
9 committed assistance in the immediately prior planning period.

10 (6) For purposes of this subdivision, “the time the unit is
11 identified” means the earliest time when any city or county agent,
12 acting on behalf of a public entity, has proposed in writing or has
13 proposed orally or in writing to the property owner, that the unit
14 be considered for substantial rehabilitation, acquisition, or
15 preservation.

16 (7) On July 1 of the third year of the planning period, as defined
17 by Section 65588, in the report required pursuant to Section 65400,
18 each city or county that has included in its housing element a
19 program to provide units pursuant to subparagraph (A), (B), or (C)
20 of paragraph (2) shall report in writing to the legislative body, and
21 to the department within 30 days of making its report to the
22 legislative body, on its progress in providing units pursuant to this
23 subdivision. The report shall identify the specific units for which
24 committed assistance has been provided or which have been made
25 available to low- and very low income households, and it shall
26 adequately document how each unit complies with this subdivision.
27 If, by July 1 of the third year of the planning period, the city or
28 county has not entered into an enforceable agreement of committed
29 assistance for all units specified in the programs adopted pursuant
30 to subparagraph (A), (B), or (C) of paragraph (2), the city or county
31 shall, not later than July 1 of the fourth year of the planning period,
32 adopt an amended housing element in accordance with Section
33 65585, identifying additional adequate sites pursuant to paragraph
34 (1) of subdivision (c) of Section 65583 sufficient to accommodate
35 the number of units for which committed assistance was not
36 provided. If a city or county does not amend its housing element
37 to identify adequate sites to address any shortfall, or fails to
38 complete the rehabilitation, acquisition, purchase of affordability
39 covenants, or the preservation of any housing unit within two years
40 after committed assistance was provided to that unit, it shall be

1 prohibited from identifying units pursuant to subparagraph (A),
2 (B), or (C) of paragraph (2) in the housing element that it adopts
3 for the next planning period, as defined in Section 65588, above
4 the number of units actually provided or preserved due to
5 committed assistance.

6 ~~SECTION 1. Section 17580 is added to the Government Code,~~
7 ~~to read:~~

8 ~~17580. (a) On and after January 1, 2010, any bill in a regular~~
9 ~~or extraordinary session of the Legislature that mandates a new~~
10 ~~program or higher level of service on any local government~~
11 ~~pursuant to Section 6 of Article XIII B of the California~~
12 ~~Constitution shall contain a provision to repeal the enactment not~~
13 ~~later than six years after it becomes operative and to require the~~
14 ~~Legislative Analyst to report to the Legislature not later than five~~
15 ~~years after it becomes operative.~~

16 ~~(b) The report by the Legislative Analyst shall contain the costs~~
17 ~~to local governments, the reimbursements provided by the state,~~
18 ~~and the extent to which the new program or higher level of service~~
19 ~~achieved its stated goals. In preparing this report, the Legislative~~
20 ~~Analyst shall consult with local governments as well as state~~
21 ~~departments. The Legislative Analyst shall include in the report a~~
22 ~~recommendation to the Legislature whether the program or level~~
23 ~~of service should be repealed, made permanent, modified, or~~
24 ~~extended for another fixed period of time.~~

25 ~~(c) Subdivision (a) does not apply to any bill that specifically~~
26 ~~makes this section inapplicable, or contains a provision to repeal~~
27 ~~the enactment in less than six years.~~

28 ~~(d) This section does not apply to any bill that creates a new~~
29 ~~crime, changes an existing definition of a crime, or changes the~~
30 ~~penalty for a crime.~~